

EASTERN AMERICAN ENERGY CORP.

IBLA 89-673

Decided June 25, 1992

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting competitive oil and gas lease offer WYW 117175.

Affirmed.

1. Oil and Gas Leases: Competitive Leases

Departmental regulations governing competitive lease sales provide that the balance of a bonus bid must be submitted within 10 working days after a competitive lease sale date and that failure to timely submit the required payment will result in bid rejection. 43 CFR 3120.5-2(c), 3120.5-3(a).

APPEARANCES: Patrick S. Nicholas, Eastern American Energy Corp., Glenville, West Virginia, for appellant.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Eastern American Energy Corporation has appealed from an August 28, 1989, decision by the Wyoming State Office, Bureau of Land Management (BLM), rejecting appellant's high bid for parcel WY-8908-199, submitted at a competitive oil and gas lease sale held in Cheyenne, Wyoming, on August 1, 1989. The parcel, comprising 120 acres, is described as the NE $\frac{1}{4}$  NE $\frac{1}{4}$ , sec. 34, and the N $\frac{1}{2}$  NW $\frac{1}{4}$ , sec. 35, T. 36 N., R. 79 W., sixth principal meridian, Natrona County, Wyoming.

BLM's decision states that the total amount of the bonus bid due of \$17,655 was to have been paid within 10 working days of the auction or by 4:30 p.m., August 15, 1989, pursuant to Departmental regulation 43 CFR 3120.5-2(c). Appellant's check No. 6106 in the required amount was not received, however, until Friday, August 18, 1989. Citing 43 CFR 3120.5-2(c), BLM rejected appellant's bid for failure to timely submit the balance of the bonus bid within 10 working days of the sale.

Appellant states on appeal that on or about July 1, 1987, its land department was moved from Aurora, Colorado, to West Virginia. Appellant explains that on August 4, 1989, it requested its Charleston office to draw a check in the amount of \$17,655 to cover the bonus bid, but that "[b]ecause of distance, poor interoffice communications and computer down time, the check was not issued until August 14, 1989." The check was sent by certified mail, postmarked August 15, and received by BLM on August 18, 1989. Appellant states that since payment was postmarked August 15, it felt BLM would accept its bid and check.

[1] The regulations relevant to this appeal became effective June 17, 1988, and were promulgated to implement section 5102(a) of the Federal Onshore Oil and Gas Leasing Reform Act of 1987, P.L. 100-203, 101 Stat. 1330-256 (Dec. 22, 1987), amending section 17(b) of the Mineral Leasing Act, 30 U.S.C. § 226(b) (1988). 53 FR 22814, 22845 (June 17, 1988). The pertinent regulation provides that the balance of a bonus bid must be submitted within 10 working days after the "last day of the oral auction." 43 CFR 3120.5-2(c). Failure to submit the balance of the bonus bid within the allowed 10 working days "shall result in rejection of the bid." 43 CFR 3120.5-3(a); Partnership One, Inc., 119 IBLA 7, 10 (1991).

The 10th working day after the August 1, 1989, competitive sale was August 15, a Tuesday. Under 43 CFR 3120.5-2(c), the balance of appellant's payment was due in BLM's office on that day. The regulations contain no provision authorizing BLM to consider as timely filed a payment which was postmarked, but not received, on the due date. Appellant's payment was received by BLM on the following Friday, 3 days after the due date. The reasons given by appellant explaining why payment was late cannot serve as a basis for waiver of the regulatory payment requirement, which is strictly applied. Partnership One, Inc., supra at 11.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Franklin D. Arness  
Administrative Judge

I concur:

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C. Randall Grant, Jr.  
Administrative Judge

